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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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25920	7590	09/07/2004		
MARTINE & PENILLA, LLP			EXAMINER	
710 LAKEWAY DRIVE			HYUN, SOON D	
SUITE 170				
SUNNYVALE, CA 94085			ART UNIT	PAPER NUMBER
			2663	

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary	Application No.	Applicant(s)
	09/753,797	PARRUCK ET AL.
	Examiner	Art Unit
	Soon D Hyun	2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 January 2001.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 20 and 22-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 20 and 22-31 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 January 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 20, and 22-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Ganmukhi et al (U.S. Patent No.5,850,399).

Regarding claim 1, 22, and 25, Ganmukhi et al (Ganmukhi) discloses a traffic shaping method using a hierarchical scheduler 10 (FIG. 1). An input 15 of the scheduler sorts a plurality of queues, each queue including a plurality of cells associated with a session 14, 16, 18 (communication device), wherein the plurality of queues are arranged according to a traffic class (a weight and a data rate) associated with each of the plurality of cells, resulting in a plurality of first level schedulers 30, 40, 50 (a plurality of sorted queues of queues). A second level scheduler MSTCFQ+ (80) regulates an aggregate output of cells from each first level scheduler based upon the traffic class. A static priority scheduler (90) schedules the regulated output of the aggregate output of cells from the MSTCFQ+ based upon the traffic class to output the cells conforming to a plurality of characteristics of a network 100. See col. 2, line 65-col. 6, line 9.

Regarding claims 2, 23, 27, and 28, Ganmukhi further discloses that each session 14, 16, 18 has an associated virtual connection.

Regarding claims 3 and 24, Ganmukhi does not explicitly disclose a plurality of input ports coupled to the sessions, but the input ports coupled to the sessions are inherently required for the scheduler because the ports are segregating the cells into the plurality of queues.

Regarding claim 20, Ganmukhi further discloses that the plurality of first level schedulers 30, 40, 50 and the static priority scheduler (90) are equivalent to a plurality of traffic shapers and a scheduler respectively as recited in the claim.

Regarding claims 26 and 29, Ganmukhi further discloses that the transmitting device is an ATM switch (col. 3, lines 20-28).

Regarding claims 30 and 31, refer to the discussion for claim 1-3.

Response to Arguments

3. Applicant's arguments filed on 01/02/2001 have been fully considered but they are not persuasive.

In page 8, lines 20-22 of the Remarks, the applicants argue that "the claimed invention the third level sorting occurs without use of direct input from the first level sorting. None of the first level sorted data is sent directly to a third level scheduler for scheduling. This feature is only one of many of claimed elements of various claims which are nowhere taught or suggested by Ganmukhi."

In response to applicant's arguments that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the first level sorting and third level sorting) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

For the reasons discussed above, the examiner believes that the claim rejection is proper.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Soon-Dong Hyun whose telephone number is (571) 272-3121. The examiner can normally be reached on Monday-Friday from 8:30 A.M. to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen, can be reached on (571) 272-3126.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2600.



CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600



S. Hyun

09/02/2004